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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 TOYA TOSHELL HUNTER,

16 Defendant.

No. CR 2:21-586(A)-JFW-2

GOVERNMENT'S SENTENCING POSITION  
AND OBJECTIONS TO THE PRESENTENCE  
REPORT REGARDING DEFENDANT TOYA  
TOSHELL HUNTER

Hearing Date: April 24, 2023

Hearing Time: 8:00 a.m.

Location: Courtroom of the  
Hon. John F. Walter

18  
19 Plaintiff United States of America, by and through its counsel  
20 of record, the United States Attorney for the Central District of  
21 California and Assistant United States Attorney Kyle W. Kahan, hereby  
22 files its Sentencing Position and Objections to the Presentence  
23 Report Regarding Defendant Toya Toshell Hunter.

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1           This Sentencing Position and Objections to the Presentence  
2 Report is based upon the attached memorandum of points and  
3 authorities, the files and records in this case, and such further  
4 evidence and argument as the Court may permit. The government  
5 reserves the right to file a sur-reply if necessary to address any  
6 positions that the defense or the United States Pretrial and  
7 Probation office may raise.

8     Dated: April 7, 2023

Respectfully submitted,

9           E. MARTIN ESTRADA  
10          United States Attorney

11          MACK E. JENKINS  
12          Assistant United States Attorney  
13          Chief, Criminal Division

14          /s/ Kyle W. Kahan

15          KYLE W. KAHAN  
16          Assistant United States Attorney

17          Attorneys for Plaintiff  
18          UNITED STATES OF AMERICA  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendant, a mail carrier for the United States Postal Service ("USPS"), abused her position by stealing access devices, checks, and personal identifying information ("PII") from mail assigned to her mail routes. These access devices were cards intended for people who were struggling financially: those that were unemployed or impacted by the COVID-19 pandemic. Defendant continued this abuse of trust by exchanging the stolen goods to a co-schemer in exchange for cash and gifts, knowing full well that the co-schemer intended to use the PII to fraudulently activate the access device cards and use them to make sham purchases and ATM withdrawals. Defendant's role in this scheme was not limited to a facilitator. Defendant herself used an access device that she stole from her mail route to fraudulently withdraw money and make illicit purchase.

On August 19, 2022, defendant was charged with 18 counts in a 20-count first superseding indictment with the following: (1) Bank Fraud, in violation of 18 U.S.C. § 1344(2); (2) Access Device Fraud in Excess of \$1,000, in violation of 18 U.S.C. § 1029(a)(5); (3) Aggravated Identity Theft, in violation of 18 U.S.C. § 1028A(a)(1); and (4) Embezzlement of Mail by a Postal Employee, in violation of 18 U.S.C. § 1709. (Dkt. 30.) On December 14, 2020, defendant pled guilty to count one of the first superseding information. (Dkts. 57, 59.)

The United States Probation and Pretrial Services Office ("USPO") issued its Presentence Investigation Report on March 21, 2023. ("PSR," Dkt. 67.) In the PSR, the USPO calculated a total offense level of 18 and a Criminal History Category of I, which

1 results in a United States Sentencing Guidelines ("U.S.S.G." or  
 2 "Guidelines") range of 27 to 33 months. (PSR ¶¶ 55, 61, 102.) On the  
 3 same date, the USPO issued its Recommendation Letter ("USPO Rec.")  
 4 and recommended that defendant be sentenced to a below-Guidelines  
 5 custodial sentence of 24 months, three years of supervised release,  
 6 no fine, and restitution totaling \$206,212.18. (USPO Rec., Dkt. 66  
 7 at 1-2.)

8 As discussed below, while the government agrees with the PSR's  
 9 determination of criminal history and that the total offense level is  
 10 18,<sup>1</sup> the government does object to the loss and restitution  
 11 calculations in the PSR. Specifically, the government stands by the  
 12 loss and restitution amounts agreed to by the parties in the plea  
 13 agreement.

14 As a result, while defendant's lengthy and pervasive scheme  
 15 unjustly enriched herself at the expense of those she was serving,  
 16 the government respectfully submits that the low-end sentence is  
 17 appropriate, just, and necessary to accomplish the goals set forth in  
 18 18 U.S.C. § 3553(a) once the appropriate offense characteristics are  
 19 imposed.

## 20 **II. PSR GUIDELINES CALCULATIONS AND OBJECTIONS**

21 On March 21, 2023, the USPO filed its PSR. The USPO calculated  
 22 defendant's adjusted offense level as 20 pursuant to the following  
 23 calculation:

24	Base Offense Level:	7	U.S.S.G. § 2B1.1(a)(1)
25	Loss Greater Than \$150,000	+10	U.S.S.G. § 2B1.1(b)(1)(F)
26	But Less Than \$250,000		

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27  
 28 <sup>1</sup> The government contends that an additional two-level  
 enhancement for defendant's trafficking of unauthorized access  
 devices is warranted. See U.S.S.G. § 2B1.1(b)(11)(B)(i).

1 More Than 10 Victims +2 U.S.S.G. § 2B1.1(b) (2) (A)

2 Abuse Of Trust/Position +2 U.S.S.G. § 3B1.3

3 (See PSR ¶¶ 30, 33.)

4 After a three-point downward adjustment for acceptance of  
 5 responsibility under U.S.S.G. § 3E1.1(b), the USPO calculated  
 6 defendant's total offense level as 18. (PSR ¶¶ 39-41.) Consistent  
 7 with the parties' plea agreement, the government agrees that the base  
 8 offense level is 7, and that two-level enhancements apply for (1) the  
 9 scheme involving more than ten victims, and (2) for defendant's abuse  
 10 of trust. The government also believes that a two-level enhancement  
 11 for trafficking of unauthorized access devices applies under U.S.S.G.  
 12 § 2B1.1(b) (11) (B) (i), which the USPO did not apply in this case.

13 The government, however, objects to the USPO's calculations of  
 14 total loss and contends that the amount agreed upon by the parties in  
 15 the plea agreement is appropriate. As a result, the government  
 16 submits that an eight-level --- not ten-level --- enhancement should  
 17 apply for loss exceeding \$95,000 but less than \$150,000 under  
 18 U.S.S.G. § 2B1.1(b) (1) (E). Thus, after a three-point downward  
 19 adjustment for acceptance of responsibility, the government contends  
 20 defendant's total offense level is 18. With a criminal history  
 21 category of I, the resulting Guidelines range is 27-33 months.

### 22 **III. STATEMENT OF FACTS**

23 In January 2019, defendant used her position as a USPS mail  
 24 carrier to steal valuable and sensitive information from mail  
 25 assigned to her mail route. (PSR ¶ 18.) This included California  
 26 Employment Development Department ("EDD") cards, Economic Impact  
 27 Payment ("EIP") cards, United States Treasury checks, and letters  
 28 containing victims' PII. Despite being entrusted with the sanctity

1 of the mail, defendant violated her oath of office, stole these  
2 items, and gave them to her co-schemer in exchange for cash and  
3 gifts. (PSR ¶¶ 18, 22.) Defendant admitted to receiving over  
4 \$80,000 in cash as part of her role in the scheme. (PSR ¶ 22.)

5 Over the course of the scheme, defendant repeatedly stole from  
6 the mail and aided her co-schemer in committing bank fraud.  
7 Defendant would then give the card and PII to her co-schemer in  
8 exchange for cash and gifts, knowing that her co-schemer planned to  
9 fraudulently use the card. (PSR ¶ 19.) Defendant's acts were  
10 crucial to the scheme, as she was the source of not just the cards  
11 themselves, but the means to active them through the victims' PII.  
12 (PSR ¶ 19.)

13 An example of defendant's many thefts included a March 16, 2020  
14 incident, where defendant opened mail assigned to her mail route and  
15 stole an EDD card and PII belonging to M.V. (PSR ¶ 20.) Defendant  
16 gave the card and PII to her co-schemer, who subsequently used the  
17 card to unlawfully withdraw \$500 from a Bank of America ATM in  
18 Corona, California on March 24, 2020. (PSR ¶ 20.) From 2019 to  
19 2020, defendant's thefts and trafficking of access devices and PII to  
20 her co-schemer led to unlawful withdrawals in a similar manner from  
21 68 different victims' accounts with losses of \$145,191.56 to Bank of  
22 America. (Plea Agreement ¶ 11.)

23 In addition, defendant not only stole access devices, she would  
24 also use them. This included an EIP card --- a card intended to  
25 assist people struggling during the COVID-19 pandemic --- that  
26 defendant elected to steal and use for her own unlawful withdrawal of  
27 \$1,400 from ATMs. (PSR ¶ 23.)  
28

**IV. DEFENDANT TRAFFICKED UNAUTHORIZED ACCESS DEVICES AS PART OF HER SCHEME**

This Court should impose a two-level enhancement for the trafficking of unauthorized access devices under U.S.S.G. § 2B1.1(b)(11)(B)(i).<sup>2</sup> Defendant repeatedly stole access devices, including EDD and EIP cards, that were contained in mail assigned to her mail route. Defendant then trafficked and transferred the access devices to a co-schemer in exchange for cash and gifts. Because defendant stole the access devices and obtained them with the intent to defraud the access device's owners, defendant's trafficking and sale of the unauthorized devices to her co-schemer means an additional two-level enhancement under U.S.S.G. § 2B1.1(b)(11)(B)(i) is warranted. See United States v. Nicolescu, 17 F.4th 706, 728 (6th Cir. 2021) (upholding the imposition of the instant offense characteristic for the sale of stolen credit-card numbers); cf. United States v. Charles, 757 F.3d 1222, 1226-27 (11th Cir. 2014) (precluding imposition of the instant offense characteristic only due to the defendant also being convicted of aggravated identity theft).

**V. A 27-MONTH SENTENCE IS JUST AND APPROPRIATE**

For the reasons set forth below, the government respectfully recommends the following sentence: (1) a low-end Guidelines term of imprisonment of 27 months; (2) a three-year period of supervised release with a suspicion-less search condition;<sup>3</sup> and (3) a mandatory special assessment of \$100.

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<sup>2</sup> Unauthorized access devices are any access device that is lost, stolen, expired, revoked, canceled, or obtained with intent to defraud. 18 U.S.C. § 1029(e)(3).

<sup>3</sup> The government recommends that the Court, at sentencing, incorporate by reference and impose the standard conditions of supervised release enumerated in General Order 20-04.

1       The government believes such a sentence appropriately balances  
2 the history and characteristics of the defendant with the need to  
3 reflect the seriousness of the offense, to protect the public, to  
4 deter defendant from further criminal acts, and to promote respect  
5 for the law.

6       **A. Nature and Circumstances of the Offense**

7       The nature and circumstances of defendant's offense support a  
8 low-end Guidelines sentence of 27 months' imprisonment. See 18  
9 U.S.C. § 3553(a)(1). Defendant's conduct impacted the ability of  
10 dozens of victims to receive unemployment benefits and funds  
11 necessary to stave off the impact of the COVID-19 pandemic.  
12 Defendant, who swore an oath to protect the sanctity of mail,  
13 violated that oath each and every time she stole mail. See 39 U.S.C.  
14 § 1011. Defendant's role was essential to the scheme. Without her,  
15 defendant's co-schemer could not obtain the necessary materials to  
16 further the scheme and withdraw funds. Indeed, defendant's position  
17 as a mail carrier is the reason she was able to steal so many access  
18 devices and PII. Given the circumstances of this case and  
19 defendant's violation of her oath to faithfully discharge the duties  
20 of her office, a low-end sentence of 27 months is appropriate.

21       **B. History and Characteristics of the Defendant**

22       Defendant's history and characteristics present aggravating and  
23 mitigating circumstances supporting a low-end Guidelines sentence.  
24 Until this incident, defendant appears to have led a law-abiding  
25 life. The government acknowledges defendant's difficult upbringing,  
26 particularly the emotional trauma of having her father leave her life  
27 (PSR ¶ 68), her mother's substance abuse issues (PSR ¶ 69), the  
28 physical and emotional abuse she suffered at the hands of her



1 mother's boyfriend (PSR ¶ 71), and being grazed with a bullet during  
2 a drive-by shooting and later seeing a dead body after another  
3 shooting. (PSR ¶ 72.) The government further acknowledges  
4 defendant's medical issues, and lack of criminal history, although  
5 the latter is belied by the fact that defendant's criminal behavior  
6 was pervasive and lasted for years. The government also acknowledges  
7 the defendant is the mother of three children, two who are juveniles.  
8 (PSR ¶ 74.)

9       However, given that defendant has these familial  
10 responsibilities, she should have known better to risk her career,  
11 livelihood, and freedom all so that she could earn a quick buck.  
12 That defendant repeatedly engaged in criminal behavior despite a  
13 steady lengthy career at the USPS demonstrates that this was not a  
14 one-off crime of opportunity, but rather just plain, pure greed. A  
15 low-end Guidelines sentence of 27 months is an appropriate balance  
16 given both the aggravating and mitigating circumstances before the  
17 Court.

18       **C.    Need to Reflect Seriousness of the Offense, Promote Respect**  
19       **for the Law, Provide Just Punishment, Afford Deterrence,**  
20       **and Protect the Public**

21       The sentence must satisfy defendant's need for punishment or  
22 rehabilitation, as well as society's need to reflect the seriousness  
23 of the offense, promote respect for the law, provide just punishment  
24 for the offense, afford adequate deterrence, and protect the public.  
25 There is a strong need for the sentence to specifically deter  
26 defendant from committing future crimes and generally deter others  
27 from committing similar crimes. See 18 U.S.C. § 3553(a)(2)(B).

28       Under the circumstances, a low-end 27-month sentence will  
impress upon defendant the seriousness of her crimes, give her time

1 to consider the consequences of his actions, and reflect on her  
2 choices and the people she associates with. Said sentence will also  
3 serve as a deterrence to all other USPS employees to uphold their  
4 duties to faithfully deliver mail and not steal sensitive and  
5 valuable information, including PII. The government's recommended  
6 custodial sentence, along with the three-year period of supervised  
7 release is sufficient to deter defendant in the future and protect  
8 the public.

9 **D. A Suspicion-less Search Condition Should be Imposed as a**  
10 **Term of Supervised Release Based on Defendant's Conduct and**  
11 **Post-Indictment Behavior**

12 Because the defendant's conduct involved a significant amount of  
13 theft, the government believes that she should be subject to a  
14 suspicion-less search condition as part of her terms and conditions  
15 of supervised release. Such a condition would provide an adequate  
16 deterrent against any recidivism and protect the public should  
17 defendant engage in any additional criminal activity while under  
18 supervision.

19 **VI. CONCLUSION**

20 For the above reasons, the government respectfully requests that  
21 the Court impose the following sentence: (1) a low-end Guidelines  
22 term of imprisonment of 27 months; (2) a three-year period of  
23 supervised release with a suspicion-less search condition; and (3) a  
24 mandatory special assessment of \$100.